IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6830 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARIJAN BHANABHAI RAMABHAI & 14 - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1 - 15.
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 4 - 5.
MR MEHUL H RATHOD for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/02/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioners, who are claiming the status of the

landless labourers, are belonging to the backward class of the Society. As per the petitioners, they are in possession of the land bearing Survey No.161 of Village Moti Gharnal, Taluka Deesa, District Banaskantha since more than 25 years. As per the petitioners, the land was a gaucher land i.e. the land reserved for grazing of cattle and the petitioners developed the land and they have cultivated the land for agricultural purpose and they are deriving they livelihood from the same. The petitioners made an application to the Collector for grant of the land to them, however, the said application was not granted vide order dated 18.3.1996 of the Mamlatdar. As per the petitioners, the application was also for regularising their possession and the same also was not granted. The petitioners also preferred Suit No.89 of 1996 for protecting their possession, but the injunction was not granted by the Civil Court. The petitioners carried the matter in appeal being Civil Misc. Appeal No.66/1996 and the said appeal came to be dismissed on 17.8.1996. It is

under these circumstances the present petition.

2. Mr.Joshi, learned Counsel appearing for the petitioners and Mr.Chhaya, learned AGP for the State.

3. Mr.Joshi, learned Counsel for the petitioners, submitted that in view of certain observations made by the Apex Court in its decisions in case of **"Madhu Kishwar & Ors. v. State of Bihar & Ors.", reported in JT 1996(4) SC, 379; "Dalmia Cement (Bharat) Ltd. & Anr. v. Union of India & Ors.", reported in JT 1996(4) SC, 555.; and "Consumer Education & Research Centre & Ors. v. Union of India & Ors.", reported in 1995(3) SCC, 42** and more particularly the observations, which are reproduced in the memo of the petition at pages 11 and 12, it is obligatory on the part of the State Authorities to consider the application of the petitioners as a special class with a view to reach socio-economic justice to the down-trodden class of the society and he, therefore, submitted that rejection of the application by the Mamlatdar on the mere ground that the land was reserved for grazing of

the cattle and there was no sufficient land is illegal and, therefore, this Court may pass appropriate orders.

4. It may be stated that during the course of hearing, when it was found by the Court that the petitioners are cultivating the land without there being any lawful authority, it was put to the learned Counsel for the petitioners as to whether the petitioners are ready to vacate the land first to show their bonafide and thereafter to press the application for appropriate decision in accordance with law as per the policy of the Government or not. In response to the same, it has been declared by Mr.Joshi appearing for the petitioners that the petitioners are ready to hand over the possession of the land in question to the District Collector within a period of six weeks from today, however, this Court may issue appropriate directions to the District Collector to decide the application of the petitioners within some time limit.

5. In view of the aforesaid declaration made by the

petitioners, if the petitioners, who might have cultivated the land due to their financial constraints at the relevant point of time, are ready to hand over the vacant possession of the land to the State Authorities, the matter can be considered for giving appropriate directions to the State Authorities to consider the application of the petitioners in accordance with law as per the prevailing policy of the State Government read with the observations made by the Apex Court in the above referred decisions. In my view, the State in the matter of allotment of the land can give priority to the weaker section of the Society with a view to see that sufficient means are available to such class for their survival. However, such aspects essentially falls in the policy decision of the State Government and while implementing the policy, it would be required for the concerned officer of the State Government to take into consideration the observations made by the Apex Court, keeping in view the larger public interest and to take appropriate decision.

6. Under the above circumstances, I find that the following directions shall meet with the ends of justice:-

(i) The petitioners shall hand over the vacant possession of the land in question to the Mamlatdar, Deesa within a period of six weeks from today as per the declaration made before this Court.

(ii) After the possession is received by the Mamlatdar, Deesa, the District Collector, Banaskantha District at Palanpur shall take up the application of the petitioners for allotment of the land in accordance with law as per the prevailing policy of the State Government. While deciding the said application, the District Collector shall also take into consideration the aspects regarding the registration of the society and that the Gram Panchayat has passed the resolution for supporting the application of the petitioners. Suffice it to say that the application shall be decided by the District Collector in accordance with

law as per the prevailing policy of the Government read with the binding decisions, if any, of the Apex Court, including the observations made by this Court in the present order. The application shall be decided by the District Collector as early as possible, preferably within a period of four months from the date of entrustment of the vacant possession by the petitioners to the Mamlatdar.

7. The petition is disposed of in terms of the aforesaid directions. Subject to the aforesaid observations and directions, rule discharged. I.R. shall continue for a period of six weeks from today. Considering the facts and circumstances, there shall be no order as to costs.

5.2.2007 **(Jayant Patel, J.)**

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